

MEMO

TO: Community, Economic and Human Development Committee (CEHD)

FROM: Jacob Lieb, Acting Lead Regional Planner, lieb@scag.ca.gov, (213) 236-1921

SUBJECT: Regional Housing Needs Assessment (RHNA) Status, Pending Process and Litigation

DATE: August 5, 2004

The purpose of this report is to update the Committee on various issues affecting the conduct of the Regional Housing Needs Assessment (RHNA) and to inform the Committee of the status of litigation resulting from the RHNA completed in 2000. Under current state law, SCAG was scheduled to begin work on the RHNA on July 1, 2004. Several pending issues, as described below, preclude the commencement of work at this time.

On June 3, 2004, the Regional Council voted unanimously to support AB 2158, which would reform the conduct of the regional housing need allocation process. Among other reforms, the bill would allow SCAG to seek a change in the region's Housing Element deadline in order to be concurrent with the RTP update and forecast process. The region's Housing Element deadline is currently July 1, 2006 which necessitates completion of the RHNA allocation by July 1, 2005. Potentially, a change in the deadline coordinated with the RTP would make Housing Elements due on July 1, 2008, and would leave currently completed Housing Elements in place until that time. To date, the bill has passed the Assembly and is scheduled for committee vote in the Senate. Staff anticipates that the bill will pass and be signed into law shortly.

Further, the Commission on State Mandates recently issued a decision which may invalidate the current process for reimbursing work on the RHNA. Through the State budget deliberations, the Legislature has proposed several alternative funding mechanisms, including either a proposal for COGs to charge a fee to members to pay for the program or a direct grant to COGs from HCD. It is likely that some new funding mechanism will be in place when the State budget is approved. However, in the interim, there is substantial uncertainty over how SCAG might cover costs of a new RHNA.

Until such time as AB 2158 becomes law, the current statute calls for SCAG to begin its housing need allocation on July 1, 2004. Given the progress of AB 2158 and uncertainty over how to proceed, SCAG has sought advice from the State Department of Housing and Community Development (HCD). As of July 21, 2004, HCD has not responded.

Status of 1999-2000 RHNA Litigation

On June 16, 2004, SCAG received a notice from Inland Empire Petitioners that a final decision had been entered in the litigation resulting from the 1999-2000 RHNA process. Of note, this decision was signed by the judge on July 7, 2003. However, none of the parties to

MEMO

the suit received any notice from the court that the judgment was entered until counsel for the Inland Empire Petitioners discovered it in a routine check of court files on approximately June 11, 2004. This delay in receiving notice of the entry of judgment complicates any potential appeals or other actions in response to the decision, as will be discussed by SCAG counsel in closed session at the August 5, 2004 CEHD meeting.

Attachment:

Notice of Entry of Judgement (RHNA litigation)

1 DOUGLAS J. EVERTZ, State Bar No. 123066
MARK J. HUEBSCH, State Bar No. 66253
2 MELANIE MCCALL HOUK, State Bar No. 174040
ALLISON E. BURNS, State Bar No. 198231
3 STRADLING YOCCA CARLSON & RAUTH
A Professional Corporation
4 660 Newport Center Drive, Suite 1600
Newport Beach, California 92660-6441
5 Telephone: (949) 725-4000
Fax: (949) 725-4100

6 Attorneys for Petitioners/Plaintiffs
7 CITY OF MORENO VALLEY, CITY OF CHINO HILLS,
COUNTY OF RIVERSIDE and COUNTY OF SAN
8 BERNARDINO

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF RIVERSIDE
12

13 CITY OF MORENO VALLEY, a
municipal corporation; CITY OF HEMET,
14 a municipal corporation; CITY OF
VICTORVILLE, a municipal corporation;
15 CITY OF CHINO HILLS, a municipal
corporation; COUNTY OF RIVERSIDE, a
16 political subdivision of the state of
California; and COUNTY OF SAN
17 BERNARDINO, a political subdivision of
18 the state of California,

19 Petitioners/Plaintiffs,

20 v.

21 SOUTHERN CALIFORNIA
ASSOCIATION OF GOVERNMENTS, a
22 regional planning agency and joint powers
authority; DEPARTMENT OF HOUSING
23 AND COMMUNITY DEVELOPMENT, a
department of the Business, Transportation
24 and Housing Agency of the State of
25 California; and DOES 1-50, INCLUSIVE,

26 Respondents/Defendants.
27
28

CASE NO. RIC 354003
[Consolidated with LASC Case No.
BC 246755]

ASSIGNED FOR ALL PURPOSES TO
HONORABLE ROBERT G. SPITZER
DEPARTMENT 8

NOTICE OF ENTRY OF JUDGMENT AND
WRIT OF MANDATE

Complaint Filed: January 30, 2001

1 SOUTHERN CALIFORNIA
2 ASSOCIATION OF GOVERNMENTS, a
3 regional planning agency and joint powers
4 of authority, ORANGE COUNTY
5 COUNCIL OF GOVERNMENTS, a
6 subregional planning agency and joint
7 powers authority, SAN BERNARDINO
8 ASSOCIATION OF GOVERNMENTS, a
9 subregional planning agency and joint
10 powers authority, COACHELLA
11 VALLEY ASSOCIATION OF
12 GOVERNMENTS, a subregional planning
13 agency and joint powers authority,
14

15 Plaintiffs,

16 vs.

17 JULIE BORNSTEIN, Director of the
18 Department of Housing and Community
19 Development, DEPARTMENT OF
20 HOUSING AND COMMUNITY
21 DEVELOPMENT, a department of the
22 Business, Transportation and Housing
23 Agency of the State of California, MARIA
24 CONTRERAS-SWEET, Secretary of the
25 Business Transportation and Housing
26 Agency, BUSINESS TRANSPORTATION
27 AND HOUSING AGENCY, an agency of
28 the Executive Branch of the California
Government; and DOES 1-50, Inclusive,

Defendants.

PLEASE TAKE NOTICE that a Judgment and Writ of Mandate in the above-captioned proceeding was entered by the Court on July 7, 2003. A true and correct copy of the Judgment and Writ of Mandate is attached hereto as Exhibit "A" and incorporated herein by reference.

DATED: June 12, 2004

STRADLING YOCCA CARLSON & RAUTH
A Professional Corporation

By:



Allison E. Burns, Attorneys for Petitioners
City of Moreno Valley, City of Chino Hills,
County of Riverside and County of San
Bernardino

1 DOUGLAS J. EVERTZ, State Bar No. 123066
2 MARK J. HUEBSCH, State Bar No. 66253
3 MELANIE MCCALL HOUK, State Bar No. 174040
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 07 2003

11 Attorneys for Petitioners/Plaintiffs
12 CITY OF MORENO VALLEY, CITY OF CHINO HILLS,
13 COUNTY OF RIVERSIDE and COUNTY OF SAN
14 BERNARDINO

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF RIVERSIDE

17 CITY OF MORENO VALLEY, a
18 municipal corporation; CITY OF HEMET,
19 a municipal corporation; CITY OF
20 VICTORVILLE, a municipal corporation;
21 CITY OF CHINO HILLS, a municipal
22 corporation; COUNTY OF RIVERSIDE, a
23 political subdivision of the state of
24 California; and COUNTY OF SAN
25 BERNARDINO, a political subdivision of
26 the state of California,

27 Petitioners/Plaintiffs,

28 v.

29 SOUTHERN CALIFORNIA
30 ASSOCIATION OF GOVERNMENTS, a
31 regional planning agency and joint powers
32 authority; DEPARTMENT OF HOUSING
33 AND COMMUNITY DEVELOPMENT, a
34 department of the Business, Transportation
35 and Housing Agency of the State of
36 California; and DOES 1-50, INCLUSIVE,

37 Respondents/Defendants.

CASE NO. RIC 354003
[Consolidated with LASC Case No.
BC 246755]

ASSIGNED FOR ALL PURPOSES TO
HONORABLE ROBERT G. SPITZER
DEPARTMENT 8

[REDACTED] JUDGMENT AND WRIT OF
MANDATE

Complaint Filed: January 30, 2001

1 SOUTHERN CALIFORNIA
2 ASSOCIATION OF GOVERNMENTS, a
3 regional planning agency and joint powers
4 of authority, ORANGE COUNTY
5 COUNCIL OF GOVERNMENTS, a
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9 subregional planning agency and joint
10 powers authority, COACHELLA
11 VALLEY ASSOCIATION OF
12 GOVERNMENTS, a subregional planning
13 agency and joint powers authority,
14

15 Plaintiffs,

16 vs.

17 JULIE BORNSTEIN, Director of the
18 Department of Housing and Community
19 Development, DEPARTMENT OF
20 HOUSING AND COMMUNITY
21 DEVELOPMENT, a department of the
22 Business, Transportation and Housing
23 Agency of the State of California, MARIA
24 CONTRERAS-SWEET, Secretary of the
25 Business Transportation and Housing
26 Agency, BUSINESS TRANSPORTATION
27 AND HOUSING AGENCY, an agency of
28 the Executive Branch of the California
Government; and DOES 1-50, Inclusive,

Defendants.

1 The above matter came on regularly for trial for the first phase of proceedings on
2 January 17, 2002 in Department 8 of the above-entitled court, the Honorable Robert G. Spitzer,
3 Judge presiding, with petitioners City of Moreno Valley, City of Chino Hills, County of
4 Riverside and County of San Bernardino (collectively the "Inland Empire Petitioners") appearing
5 by their attorneys of record, Douglas J. Evertz and Allison E. Burns of the law firm of Stradling
6 Yocca Carlson & Rauth, petitioner and respondent Southern California Association of
7 Governments ("SCAG") appearing by its attorneys of records Colin Lennard and Patricia Chen
8 of the law firm Fulbright & Jaworski and respondent Department of Housing and Community
9 Development ("HCD") appearing by its attorney of record Carol Squire of the California
10 Attorney General's office. The court issued a statement of decision in the first phase of
11 proceedings on August 1, 2002. The parties submitted supplemental briefing on the second
12 phase of proceedings in the Fall of 2002.

13
14 The court, having considered the administrative record, exhibits identified and received
15 into evidence, briefs and oral argument, and the court having issued its Statement of Decision on
16 April 21, 2003:

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18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- 19
20 1) SCAG's Petition for Writ of Mandate:
- 21
- 22 a) SCAG's petition for traditional mandamus in its First Cause of Action
23 challenging inconsistency between the RHNA and RTP process is denied;
- 24 b) SCAG's petition for traditional mandamus in its Second Cause of Action
25 alleging denial of due process is denied;
- 26
- 27 c) SCAG's petition for traditional mandamus in its Fifth Cause of Action
28 alleging violation of the Administrative Procedures Act is denied.

1 2) Inland Empire Petitioners' Petition for Writ of Mandate:

- 2
- 3 a) HCD is permanently enjoined from accepting Regional Housing Needs
- 4 Assessment ("RHNA") allocations of one jurisdiction within the SCAG
- 5 region while rejecting allocations of another jurisdiction;
- 6 b) This court declares that HCD may only accept or reject the RHNA
- 7 allocations for the entire SCAG region as a whole;
- 8
- 9 c) This court declares that HCD deprived the Inland Empire Petitioners of
- 10 fundamental due process rights, by its *de facto* invalidation of the Inland
- 11 Empire Petitioners' Final RHNA allocations adopted by SCAG on
- 12 November 2, 2000 (the "Final RHNA");
- 13 d) This court further declares that Government Code section 65584 permits
- 14 adjustments to the RHNA allocation to the SCAG region throughout the
- 15 RHNA allocation process mandated by Section 65584;
- 16
- 17 e) HCD is mandated to set aside its December 13, 2000 decision imposing
- 18 the Draft RHNA allocations on the Inland Empire Petitioners and to enter
- 19 a new and different decision consistent with the Court's April 21, 2003
- 20 Statement of Decision;
- 21 f) HCD is enjoined from refusing to certify the Inland Empire Petitioners'
- 22 Housing Elements or denying housing funds based on the Inland Empire
- 23 Petitioners' use of the Final RHNA;
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- 25 g) The Inland Empire Petitioners' petition that the court command HCD to
- 26 accept SCAG's Final RHNA is denied;
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- h) This Court declares that SCAG deprived the Inland Empire Petitioners of fundamental due process rights by its conduct of the RHNA allocation process;
- i) SCAG is enjoined from enforcing its position 1) that subregional allocation of housing units has to be maintained and/or 2) that reductions of one jurisdictions' RHNA allocation must be redistributed to jurisdictions within the same subregion;
- i) The Inland Empire Petitioners' petition for an order commanding SCAG to reallocate the 66,774 housing units at issue herein on a regionwide basis is denied.
- 3) The Court retains continuing jurisdiction of this matter.
- 4) The Inland Empire Petitioners shall recover their costs of suit equally from each of SCAG and HCD.

DATED: 7-7-03

ROBERT G. SPITZER

HONORABLE ROBERT G. SPITZER
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE

I, Lorin Moreno, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660-6441. On May 6, 2003, I served the within word document(s):

[PROPOSED] JUDGMENT AND WRIT OF MANDATE

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Newport Beach, California addressed as set forth below.

☐ by causing personal delivery by Express Network, Inc. of the document(s) listed above to the person(s) at the address(es) set forth below.

Justine Block, Esq.
Southern California Association of Governments
818 West Seventh Street, 12th Floor
Los Angeles, California 90017-3435

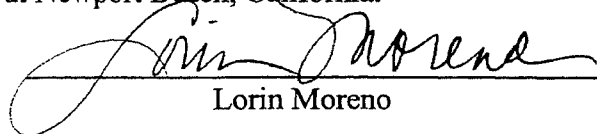
Colin Lennard
Fulbright & Jaworski
865 S. Figueroa Street, Suite 2900
Los Angeles, California 90017

Carol Squire, Esq.
110 West A Street, Suite 1100
Post Office Box 85266
San Diego, California 92186-5266

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 6, 2003, at Newport Beach, California.


Lorin Moreno

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-6-

1 **PROOF OF SERVICE**

2 I, Stephanie S. Pattis, declare:

3 I am a resident of the State of California and over the age of eighteen years, and
4 not a party to the within action; my business address is 660 Newport Center Drive, Suite 1600,
5 Newport Beach, California 92660-6441. On June 14, 2004, I served the within word
document(s):

6 **NOTICE OF ENTRY OF JUDGMENT AND WRIT OF MANDATE**

7 ☐ by transmitting via facsimile the document(s) listed above to the fax number(s)
8 set forth below on this date before 5:00 p.m.

9 ☒ by placing the document(s) listed above in a sealed envelope with postage
10 thereon fully prepaid, in the United States mail at Newport Beach, California
addressed as set forth below.

11 ☐ by causing personal delivery by First Legal, Inc. of the document(s) listed above
12 to the person(s) at the address(es) set forth below.

13
14 Justine Block, Esq.
15 Southern California Association of Governments
16 818 West Seventh Street, 12th Floor
Los Angeles, California 90017-3435

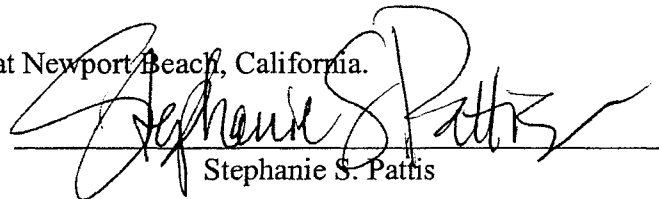
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18 110 West A Street, Suite 1100
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San Diego, California 92186-5266

20 I am readily familiar with the firm's practice of collection and processing
21 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
22 Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
am aware that on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than one day after date of deposit for mailing in affidavit.

23 I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct.

25 Executed on June 14, 2004, at Newport Beach, California.

26 
27 Stephanie S. Pattis
28

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